

**BURSOR & FISHER, P.A.**

L. Timothy Fisher (State Bar No. 191626)  
Neal J. Deckant (State Bar No. 322946)  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-Mail: ltfisher@bursor.com  
ndeckant@bursor.com

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

KEITH BARNES, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

THE COCA-COLA CO.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Keith Barnes (“Plaintiff”), on behalf of himself and all other persons similarly  
2 situated, by and through his attorneys, makes the following allegations pursuant to the investigation  
3 of his counsel and based upon information and belief, except as to allegations specifically  
4 pertaining to himself and his counsel, which is based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. Plaintiff alleges the following on information and belief against The Coca-Cola  
7 Company (“Coca-Cola” or “Defendant”) regarding Defendant’s violations of the Telephone  
8 Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

9 2. Plaintiff brings this Complaint to: (1) stop Defendant’s practice of placing calls  
10 using an artificial or prerecorded voice to the cellular and landline telephones of consumers  
11 nationwide without their prior express written consent; (2) enjoin Defendant from continuing to  
12 place calls using a prerecorded voice to consumers who did not provide their prior express written  
13 consent to receive them; and (3) obtain redress for all persons injured by its conduct.

14 **THE PARTIES**

15 3. Plaintiff Keith Barnes is, and at all times mentioned herein was, a resident of  
16 Bakersfield, California, and a citizen of the State of California.

17 4. Defendant The Coca-Cola Company is a corporation organized under the laws of  
18 Delaware, with a principal place of business at One Coca-Cola Plaza, Atlanta, Georgia 30313.  
19 Defendant conducts business in this District and throughout the state of California.

20 **JURISDICTION AND VENUE**

21 5. This Court has subject matter jurisdiction over this action pursuant to the Class  
22 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, inter alia, amends 28  
23 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as  
24 here: (a) there are 100 or more members in the proposed class; (b) some members of the proposed  
25 Class have a different citizenship from Defendant; and (c) the claims of the proposed class  
26 members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. See 28 U.S.C.  
27 § 1332(d)(2) and (6).

1           6.       This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331  
2 because this action involves violations of a federal statute, the TCPA.

3           7.       This Court has personal jurisdiction over Defendant because the wrongful conduct  
4 giving rise to this case occurred in, was directed to, and/or emanated from this District.

5           8.       Venue is proper in this District under 28 U.S.C. § 1391(b) because Plaintiff resides  
6 in this District and because the wrongful conduct giving rise to this case occurred in, was directed  
7 to, and/or emanated from this District.

8                   **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

9           9.       In 1991, Congress enacted the TCPA in response to a growing number of consumer  
10 complaints regarding certain telemarketing practices.

11           10.      The TCPA prohibits, among other things, “initiat[ing] any telephone call to any  
12 resident telephone line [or cellphone] using an artificial or prerecorded voice to deliver a message  
13 without the prior express consent of the called party . . . .” 47 U.S.C. § 227(b)(1)(A)-(B).

14           11.      The FCC has issued rulings clarifying that, for calls that “include[] or introduce[] an  
15 advertisement or constitutes telemarketing,” the caller must first receive “the prior express written  
16 consent of the called party . . . .” See 47 C.F.R. § 64.1200(a)(2); see also 2012 FCC Order, 27  
17 FCC Rcd. at 1839 (“[R]equiring prior written consent will better protect consumer privacy because  
18 such consent requires conspicuous action by the consumer—providing permission in writing—to  
19 authorize autodialed or prerecorded telemarketing calls. . . .”).

20           12.      Coca-Cola called Plaintiff on his cellular telephone on numerous occasions.

21           13.      Defendant placed each of these calls using an artificial or prerecorded voice without  
22 Mr. Barnes’s prior express written consent.

23           14.      When Plaintiff answered Defendant’s calls, he heard a recording played with a  
24 message beginning: “Hello, this call is Coca-Cola calling to remind you that we will be contacting  
25  
26  
27  
28

1 you soon for your upcoming delivery . . . .” Coca-Cola left Mr. Barnes multiple voicemails with  
2 the same message.

3 15. Mr. Barnes has never consented in writing, or otherwise, to receive prerecorded  
4 telephone calls from Defendant.

5 16. Defendant knowingly made (and continues to make) prerecorded calls to the  
6 telephones of Plaintiff and other consumers without the prior express written consent of the call  
7 recipients. In so doing, Defendant not only invaded the personal privacy of Plaintiff and members  
8 of the putative Class, but also intentionally and repeatedly violated the TCPA.

9 **CLASS ACTION ALLEGATIONS**

10 17. Plaintiff proposes the following Artificial OR Pre-Recorded Voice Class definition:

11 All persons within the United States who (a) received a telephone call on his or her  
12 landline or cellular telephone; (b) made by or on behalf of Defendant.

13 18. Plaintiff represents, and is a member of, this proposed Class. Excluded from the  
14 Class is Defendant and any entities in which Defendant has a controlling interest, Defendant’s  
15 agents and employees, any Judge and/or Magistrate Judge to whom this action is assigned, and any  
16 member of such Judges’ staffs and immediate families.

17 19. **Numerosity.** Plaintiff does not know the exact number of members in the proposed  
18 Class, but reasonably believes, based on the scale of Defendant’s business, that the Class is so  
19 numerous that individual joinder would be impracticable.

20 20. **Existence and predominance of common questions of law and fact.** Plaintiff and  
21 all members of the proposed Class have been harmed by the acts of Defendant in the form of  
22 multiple involuntary telephone and electrical charges, the aggravation, nuisance, and invasion of  
23 privacy that necessarily accompanies the receipt of unsolicited and harassing telephone calls, and  
24 violations of their statutory rights.

25 21. The disposition of the claims in a class action will provide substantial benefit to the  
26 parties and the Court in avoiding a multiplicity of identical suits.

27 22. The proposed Class can be identified easily through records maintained by  
28 Defendant.

1           23.     There are well defined, nearly identical, questions of law and fact affecting all  
2 parties. The questions of law and fact involving the class claims predominate over questions which  
3 may affect individual members of the proposed Class. Those common question of law and fact  
4 include, but are not limited to, the following:

- 5           a) Whether Defendant made telephone calls to Plaintiff and Class Members using an artificial  
6 or prerecorded voice without their prior express consent;  
7           b) Whether Defendant's conduct was knowing and/or willful;  
8           c) Whether Defendant is liable for damages, and the amount of such damages; and  
9           d) Whether Defendant should be enjoined from engaging in such conduct in the future.

10           24.     **Typicality.** Plaintiff asserts claims that are typical of each member of the Class  
11 because they are all persons who received calls on their telephones using a prerecorded voice  
12 without their prior express written consent. Plaintiff will fairly and adequately represent and  
13 protect the interests of the proposed Class, and has no interests which are antagonistic to any  
14 member of the proposed Class.

15           25.     **Adequacy of Representation.** Plaintiff will fairly and adequately represent and  
16 protect the interests of the proposed Class, and has no interests which are antagonistic to any  
17 member of the proposed Class.

18           26.     Plaintiff has retained counsel experienced in handling class action claims involving  
19 violations of federal and state consumer protection statutes.

20           27.     **Superiority.** A class action is the superior method for the fair and efficient  
21 adjudication of this controversy.

22           28.     Classwide relief is essential to compel Defendant to comply with the TCPA.

23           29.     The interest of the members of the proposed Class in individually controlling the  
24 prosecution of separate claims against Defendant is small because the statutory damages in an  
25 individual action for violation of the TCPA are relatively small.

26           30.     Management of these claims is likely to present significantly fewer difficulties than  
27 are presented in many class claims because the calls at issue are all prerecorded and the members  
28

1 of the Class, by definition, did not provide the prior express consent required under the statute to  
2 authorize calls to their telephones.

3 31. Defendant has acted on grounds generally applicable to the proposed Class, thereby  
4 making final injunctive relief and corresponding declaratory relief with respect to the proposed  
5 Class as a whole appropriate.

6 32. Moreover, on information and belief, Plaintiff alleges that the TCPA violations  
7 complained of herein are substantially likely to continue in the future if an injunction is not  
8 entered.

9 **COUNT I**  
10 **Violation of the Telephone Consumer Protection Act**  
11 **47 U.S.C. § 227, *et seq.***

12 33. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if  
13 fully stated herein.

14 34. The foregoing acts and omissions of Defendant constitute numerous and multiple  
15 violations of the TCPA, including but not limited to each of the above-cited provisions of 47  
16 U.S.C. § 227 *et seq.*

17 35. As a result of Defendant's violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and  
18 members of the proposed Class are entitled to an award of \$500.00 in statutory damages for each  
19 and every call made in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

20 36. Plaintiff and members of the proposed Class are also entitled to, and do, seek  
21 injunctive relief prohibiting such conduct violating the TCPA by Defendant in the future.

22 37. Plaintiff and members of the proposed Class are also entitled to an award of  
23 attorneys' fees and costs.

24 **COUNT II**  
25 **Knowing And/Or Willful Violations of the Telephone Consumer Protection Act**  
26 **47 U.S.C. § 227, *et seq.***

27 38. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if  
28 fully stated herein.



**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury on all claims so triable in this action.

Dated: November 21, 2022

**BURSOR & FISHER, P.A.**

By: /s/ Scott A. Bursor  
Scott A. Bursor

L. Timothy Fisher (State Bar No. 191626)  
Neal J. Deckant (State Bar No. 322946)  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-Mail: ltfisher@bursor.com  
ndeckant@bursor.com

Scott A. Bursor (State Bar No. 276006)  
701 Brickell Avenue, Suite 1420  
Miami, FL 33131  
Telephone: (305) 330-5512  
Facsimile: (305) 676-9006  
E-mail: scott@bursor.com

*Attorneys for Plaintiff*